

UTL- 15014 -X

at by ACC
7/20/2004
Procedural Conference

BEFORE THE ARIZONA CORPORATION COMMISSION

ES DIVISION STAFF,

) DOCKET NO.
) T-03267A-03-0887

Complainant,

USA TELECOMMUNICATIONS
, INC.,
Respondent.

Respondent.

) PROCEDURAL
) CONFERENCE

Arizona Corporation Commission
DOCKETED

AUG 03 2004

At: Phoenix, Arizona

Date: July 20, 2004

Filed: AUG - 3 2004

DOCKETED BY

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UTL- 15014

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McLeodUSA Complaint by ACC
T-03267A-03-0887

7/20/2004
Procedural Conference

BEFORE THE ARIZONA CORPORATION COMMISSION

UTILITIES DIVISION STAFF,

) DOCKET NO.
) T-03267A-03-0887

Complainant,

V.

MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC.,
Respondent.

Respondent.

) PROCEDURAL
) CONFERENCE

RECEIVED

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At: Phoenix, Arizona

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ARIZONA CORPORATION COMMISSION
HEARING DIVISION

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

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3 UTILITIES DIVISION STAFF,) DOCKET NO.
4) T-03267A-03-0887

5 Complainant,)

6 v.)

7 McLEODUSA TELECOMMUNICATIONS)
8 SERVICES, INC.,)

9 Respondent.)

10) PROCEDURAL

11) CONFERENCE

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14 At: Phoenix, Arizona

15 Date: July 20, 2004

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19 REPORTER'S TRANSCRIPT OF PROCEEDINGS

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ARIZONA REPORTING SERVICES, INC.

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Phoenix, Arizona 85004-1126

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By: MICHELE E. BALMER, RPR
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27 Prepared for:

28 ACC

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before
3 the Arizona Corporation Commission, 1200 West
4 Washington Street, Phoenix, Arizona, commencing at
5 2:35 p.m. on the 20th day of July, 2004.

6
7 BEFORE: JANE L. RODDA, Administrative Law Judge

8 APPEARANCES:

9 For the Arizona Corporation Commission Staff:

10 GARY HORTON
11 Staff Attorney, Legal Division
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 For McLeodUSA:

15 ROSHKA, HEYMAN & DeWULF, PLC
16 By: Mr. Michael W. Patten
17 Suite 800
18 400 East Van Buren Street
19 Phoenix, Arizona 85004

20
21 MICHELE E. BALMER
22 Certified Court Reporter
23 Certificate No. 50489
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1 ALJ RODDA: Let's go on the record in Docket
2 T-03267A-03-887, which is the matter of Utilities
3 Division Staff versus McLeod Telecommunications
4 Services, Inc.

5 Good afternoon. My name is Jane Rodda. I'm
6 the Administrative Law Judge in this matter.

7 First thing I'll do is take appearances of the
8 parties. On behalf of Commission Staff?

9 MR. HORTON: Good afternoon, Your Honor. Gary
10 Horton on behalf of Commission Staff.

11 ALJ RODDA: And on behalf of McLeod
12 Telecommunications?

13 MR. PATTEN: Michael Patten, Roshka, Heyman &
14 DeWulf on behalf of McLeodUSA Telecommunications. I'll
15 just note that Bill Courter from McLeod is in the
16 audience here today.

17 ALJ RODDA: Well, thank you.

18 All right. We have another complaint filed by
19 Staff. And my copy of the file shows that an answer
20 has been filed and the matter is ready to be set for
21 hearing.

22 I guess I'll ask the parties -- maybe I'll ask
23 you, Mr. Patten. Are these similar issues that were
24 raised in the proceeding we just had involving Eschelon
25 or --

1 MR. PATTEN: I believe they're similar. I've
2 seen the Eschelon complaint, and Mr. Horton can perhaps
3 speak to the similarity. We, in our answer, identified
4 similar concerns in terms of applicability of 252 (e),
5 and we also have some concerns about whether all of the
6 agreements identified are interconnection agreements.

7 However, we did approach Staff requesting a
8 meeting to see if we can perhaps reach a resolution of
9 this case without moving on to the motion stage.

10 ALJ RODDA: And so when you say that, do you
11 mean you've just done that, or you all are talking, or
12 what does that mean?

13 MR. PATTEN: We're talking. In fact,
14 Mr. Courter has come out from Iowa, and we're going to
15 meet with Staff immediately following this hearing.
16 And depending on how that meeting goes, obviously, the
17 potential of filing a motion similar to what Eschelon
18 has filed is there.

19 We've taken a little bit different approach and
20 wanted to talk to Staff first, and we tried to arrange
21 this a while ago. But given schedules, today really
22 was the first day that we could all get together.

23 And the other part of the delay, you may know,
24 from the time of the filing of the complaint until now
25 is we agreed not to file our answer until after the

1 Qwest 252 (e) docket was resolved.

2 ALJ RODDA: Okay. So what is your preference
3 today, Mr. Horton? Do you want -- do you have a
4 recommendation?

5 MR. HORTON: I think probably the best course
6 of action, Your Honor, would probably be to see how the
7 settlement talks go. See whether a procedural order
8 setting timelines for filing of testimony or perhaps
9 making the same legal arguments that we're making in
10 the other complaint is necessitated or not.

11 I think it probably would be good if the
12 parties were to keep you apprised of how the settlement
13 agreements are proceeding, and we could do that with
14 filings into the docket. If there is a settlement
15 reached, of course, that would also reach you for your
16 approval.

17 ALJ RODDA: Do you think it's more efficient to
18 let you all talk a while and then maybe do a similar
19 proposed schedule as occurred in the Eschelon matter,
20 versus do you want me to set -- do you think it would
21 be helpful to have something set now? Or I guess I --

22 MR. HORTON: It's so early in our discussions
23 -- we got to speak for about 10 minutes before we came
24 back down here, Your Honor -- that it's really kind of
25 hard to tell where we're at in the settlement

1 discussions. And that really kind of drives the need
2 for any type of procedural schedule.

3 ALJ RODDA: Well, then, maybe --

4 MR. HORTON: It's difficult.

5 ALJ RODDA: So maybe the best thing is to leave
6 it up to you all to talk. And either party -- I mean,
7 you each can make your own assessment of how they're
8 going. I suspect -- it's Staff's complaint. So that
9 if you felt that progress wasn't being made that you
10 would initiate some sort of --

11 MR. HORTON: We would either ask Your Honor to
12 set a procedural schedule to continue into hearing, or
13 perhaps Mr. Patten and I would discuss the filing of a
14 motion to brief Your Honor on the legal issues as we
15 did in the McLeod matter, or rather the Eschelon
16 matter.

17 ALJ RODDA: I take it, Mr. Patten -- I remember
18 from the answer, I know you raised the issue of these
19 aren't interconnection agreements. I'm not sure you
20 raised the issue of --

21 MR. PATTEN: We also identified the issue of
22 whether or not 252 (e) applied.

23 ALJ RODDA: So it's basically the same legal
24 issues.

25 MR. PATTEN: It would be the same legal issues.

1 Some of the factual information underlying the
2 interconnection agreement may be a little bit
3 different. The agreements certainly are different
4 agreements from what the Eschelon agreements are.

5 ALJ RODDA: Yeah. I understand the factual
6 circumstances. Well --

7 MR. HORTON: Your Honor, I'm sorry. I would
8 add, yes, the same legal issue is out there concerning
9 whether or not the CLECs share in the responsibility
10 for the filing of the agreements.

11 ALJ RODDA: So in some respects, I mean, the
12 two matters -- it makes some sense to have them
13 considered along a similar time frame.

14 MR. PATTEN: Your Honor, I think that may make
15 sense. It's not our intent to drag out settlement
16 discussions for a long time if we don't think that
17 there's a chance of reaching some resolution. I don't
18 anticipate Staff wants to have this thing drag on
19 either.

20 And perhaps we could coordinate with Staff to
21 coordinate briefings so that ultimately they're ready
22 to be heard about the same time as the Eschelon motion
23 may be heard. And that's just -- I haven't talked to
24 Mr. Horton about that, but that certainly seems to make
25 sense to me. And October 29 is a way down the line.

1 ALJ RODDA: It just makes sense to me, because
2 the legal issues are the same, that -- I don't know.

3 MR. HORTON: Yes.

4 MR. PATTEN: We agree.

5 MR. HORTON: I agree. We agree.

6 ALJ RODDA: You could see the issues that might
7 arise. Okay. So I encourage the parties to do
8 whatever they see in their interest to do, and I will
9 attempt to facilitate that as much as I can with some
10 sort of procedural guidance, if that's vague enough for
11 you all.

12 MR. HORTON: That's fair.

13 ALJ RODDA: I guess I would appreciate if you
14 keep me apprised if you know one way or the other that
15 you're on track or off track. You know, you're
16 proceeding towards briefing or your proceeding towards
17 settlement. I guess keep me apprised as soon as you --

18 MR. HORTON: We will do so, Your Honor.

19 MR. PATTEN: Yes, Your Honor.

20 ALJ RODDA: Well, thank you very much for
21 showing up this afternoon, and I'll see you soon.

22 (The Procedural Conference concluded at
23 2:45 p.m.)

24

25

1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
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6 I, MICHELE E. BALMER, Certified Court Reporter
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10 the foregoing matter, all done to the best of my skill
11 and ability.
12

13 WITNESS my hand this 2nd day of August, 2004.
14

15 *Michele E. Balmer*
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18 Certified Court Reporter
19 Certificate No. 50489
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